

# EXHIBIT 18, Part 4 of 4

1 of an agreement where Central United agreed to  
2 grandfather people who were already on claim, and the  
3 Mississippi department allowed them to pay claims for  
4 actual charges going forward as to anybody who had  
5 incurred a claim up to that point in time to pay claims  
6 exactly like the injunction in this settlement.

7 But in the final analysis, this is nothing more  
8 than an attempt to opt out late an entire state when  
9 the notice has gone out to these states. Mr. Phillips  
10 doesn't represent these people. He represents his  
11 people, and he's already opted them out.

12 Meanwhile, the notice went out. Some people  
13 opted out. Some people decided on their own to stay in  
14 the settlement. Many of them filed claims in the  
15 settlement. He has no standing and no right to opt out  
16 an entire state.

17 And one final point. I don't believe I've seen  
18 any cases cited by anybody where a court allowed  
19 someone to just carve out an entire state of a  
20 settlement. So absent any legal authority, and really  
21 absent any factual basis, we request that the objection  
22 be overruled.

23 THE COURT: Briefly.

24 MR. PHILLIPS: Very brief because this is just a  
25 matter of intellectual honesty, intellectual accuracy

1 on it. The clear Mississippi law that I had reference  
2 to are the clear Mississippi Supreme Court cases that  
3 itemized one, two, three, four, five, by Judge Pepper.  
4 And Judge Pepper doesn't try to make up Mississippi  
5 law. He has tremendous respect for the rights of the  
6 states to make the law for the citizens of those  
7 states. And Federal Judge Pepper cited the Mississippi  
8 Supreme Court on elementary A, B, C contract  
9 interpretation law in determining that actual charges  
10 in a contract drafted by them was ambiguous, and  
11 therefore to be applied. And that's the clear  
12 Mississippi law. And I know it's been the law there  
13 since at least 1972, when I started. And I know it's  
14 the law under the current existing nine members of the  
15 Mississippi Supreme Court. But that's the clear  
16 Mississippi law that I was talking about.

17 THE COURT: I am going to take a break till 1:15  
18 for lunch. I'm trying to get a feel for how many  
19 people are left and how long they anticipate going so I  
20 can make plans for the afternoon, or let other people  
21 make plans for my absence, would probably be more  
22 appropriate. Mr. Matthews, you're probably --

23 MR. MATTHEWS: Judge, you know, I'm very, very  
24 long-winded. So it will probably take me five, ten  
25 minutes.

1 THE COURT: I understand. Who else?

2 MR. DAN TURNER: If the Court is going to hear  
3 our motion, I'm 10 minutes, 15 minutes maybe.

4 MR. KNIE: May it please the Court, although I  
5 had preliminary motions, I do have objections to put on  
6 the record. And it will be brief because obviously  
7 some of the previous arguments will be incorporated  
8 into the objection.

9 THE COURT: That gives me an idea what I need.  
10 Court will be in recess till 1:15.

11 (Recess.)

12 THE COURT: Go ahead, Mr. Knie.

13 MR. BOHRER: Your Honor, may I interrupt one  
14 second, please? Just we would like to lodge an  
15 objection on behalf of both plaintiff and defendant to  
16 Mr. Knie presenting with respect to any objection. To  
17 our knowledge, there has been no timely filed notice of  
18 appearance in accordance with the preliminary approval  
19 order and as set forth in the notice.

20 And to be consistent, Your Honor, I know this  
21 issue arose last month with an attempt by Mr. Tony  
22 Gould to appear through an untimely notice of  
23 appearance, and the Court denied that. So for  
24 consistency purposes, and because there is no timely  
25 filed notice of appearance, we object to Mr. Knie

1 presenting today on behalf of an objector.

2 THE COURT: All right. And I, to be honest with  
3 you, lost track of who has done what. And I appreciate  
4 that. Mr. Knie, I am going to let you do a couple of  
5 things, one, make any record you want on that issue.  
6 And I'm trying to look through here. And on whose  
7 behalf were you going to be arguing your objection?

8 MR. KNIE: Only on behalf of Mr. Stephen Hege,  
9 who employed me very recently, Your Honor, well after  
10 the deadlines. And he is terminally ill and takes  
11 treatments daily.

12 In addition to that, his immune system is such  
13 that he is unable to come to a public forum himself.  
14 He and his wife have purchased a self-contained camper  
15 to travel in with bathroom and everything, so they're  
16 not exposed to the public. This is about fairness.  
17 And if there's ever been a situation which screams out  
18 for the Court's discretion to allow someone to speak  
19 when an individual unrepresented didn't request to  
20 speak under those circumstances, I would argue that  
21 this is it. I will be very brief. As I said, I do  
22 have a plane to catch. I'm not going to tie up much of  
23 the Court's time.

24 THE COURT: Well, I have his letter here. It was  
25 received in the clerk's office on June the 29th, 2009.

1 And I will let you speak briefly, but am considering  
2 essentially this as his objection, this meaning his  
3 letter that was sent, I guess.

4 MR. KNIE: Thank you, Your Honor. I appreciate  
5 it. I'm sure he appreciates it, as well. If I may,  
6 Your Honor.

7 THE COURT: All right.

8 MR. KNIE: First of all, I know the Court  
9 recognizes that Mr. Hege, as an objector in June of  
10 this year, was not a lawyer, and he could only  
11 factually, and as a lay person, speak his feelings and  
12 certainly could not speak to legal issues and the  
13 things that this Court must consider as a legal matter.

14 The first point I would make by way of objection  
15 in asking this Court to not only set aside its  
16 preliminary approval, but to deny final approval today  
17 is that there is a distinct inter-class conflict going  
18 on here. And it's not a minor one, it is a major class  
19 conflict.

20 What we have, Your Honor, is, we have  
21 policyholders that have submitted small claims. And as  
22 one of the gentlemen said this morning that spoke, on a  
23 \$10,000 difference in the claims between the billed  
24 amount and the amount they're willing to pay, they're  
25 going to get \$4,000. Now, that's 40 percent. Mr. Hege

1 has got \$75,000 in outstanding claims. But what's  
2 happening is that his claims are mushrooming as we  
3 speak because of the chemo and the radiation and such  
4 that necessarily goes on in this multiple myeloma  
5 situation that he's got.

6 So what he's going to have is possibly a \$100,000  
7 difference, just to use an example, and he will only  
8 get a cap of 15,000. So rather than getting the  
9 40 percent, as these gentlemen spoke about, he'll get  
10 15 percent. So that class conflict between the smaller  
11 claimants and the largest claimants is such a real  
12 inter-class conflict that I would argue that unless the  
13 cap is removed, that this Court seems bound to set this  
14 proposed settlement aside. There is no reason for this  
15 cap. This company is going to save hundreds of  
16 millions of dollars by this, Your Honor. And they can  
17 afford the cap coming off.

18 The second thing I would say is -- and as  
19 Mr. Phillips very wisely pointed out, Your Honor, the  
20 class notice is designed to get people in the class.  
21 If you really want to be fair, you have an opt-out form  
22 just like you have a claim form. They've got three  
23 separate claim forms. But to a Steve Hege, who did a  
24 pretty good job of preparing an objection, Your Honor,  
25 there was no opt-out form to use. He couldn't look at

1 a form in the face like a claims form and say, "What  
2 should I really do?" He would have to create something  
3 himself and hope that it complied.

4 But the worst part, Your Honor, is, why does he  
5 have to file a claim at all? He has already filed  
6 claims for \$75,000. If this settlement is approved,  
7 the Steve Heges of the world should simply get a check.  
8 The reason they are requiring a new claim is that these  
9 counsel know that in class settings, there is generally  
10 a very low response to the claims. Many people will  
11 just think it's just not worth my time or I'll never  
12 get anything out of it, so they don't fill out a claim.

13 But my point is, if Steve Hege has already  
14 submitted a claim for his \$75,000 in past due benefits,  
15 why, he should get that check right away. He shouldn't  
16 be required to have a new judicially-imposed element to  
17 his contract that would require yet another hurdle to  
18 get money that is due him.

19 Your Honor, there's also a real issue with the  
20 rate freeze. They are saying, "Well, these people are  
21 getting a rate freeze of a year." But what, we're now  
22 in mid-November. And, you know, unless the Court rules  
23 today, it could be that there will be maybe only a  
24 30-day rate freeze. They can't take credit for past  
25 consideration. The law of almost every state says that



1 past consideration is not adequate consideration to  
2 bind. It has to be present or future consideration.  
3 So we would also center an objection that this is not  
4 fair consideration.

5 And then last of all, on behalf of Mr. Hege, I  
6 would argue that even though Arkansas law does say that  
7 there does not have to be a state-by-state analysis of  
8 a national class action, Arkansas law cannot just shun  
9 what the US Supreme Court has said in the Schutz  
10 decision which says that there does need to be one.  
11 And I would argue that when the law of a state is in  
12 conflict with the United States Supreme Court, that the  
13 United States Supreme Court is the court that  
14 ultimately decides that.

15 Just two more quick points, Your Honor.  
16 Mr. Phillips also spoke to something -- and let me just  
17 back up one second. If this settlement is not fair to  
18 Steve Hege but most other class participants -- and  
19 they say up to 20 percent of the class participants are  
20 the high-dollar participants, so this class is not fair  
21 to 20 percent of the participants.

22 THE COURT: Well, we're getting a little far  
23 afield of Mr. Hege's letter arguing on behalf of other  
24 class members.

25 MR. KNIE: Well, arguing on behalf of Mr. Hege,

1 but I'm just using that to show that there's really  
2 20 percent of this class is the Steve Hege of the  
3 world.

4 THE COURT: I understand. This is Steve Hege's  
5 objection and not those.

6 MR. KNIE: I'll pull it back in, Your Honor.  
7 Then if he is not being treated fairly, Your Honor,  
8 that violates the Supreme Court case of Amchem Products  
9 v. Windsor which says the Court should reject any  
10 settlement which is not fair to all class members.

11 Mr. Phillips made an excellent point earlier when  
12 he said that what they're asking this Court to do is to  
13 create a coordination of benefits among insurance  
14 policies. And I believe he said that under Mississippi  
15 law, that was illegal unless it was in the contract.  
16 It is not in these contracts.

17 THE COURT: Well, and that's not in this letter  
18 either. So I was going to allow you to argue the  
19 arguments made by Mr. Hege that he preserved in his  
20 letter. But we're getting well far afield of that.

21 MR. KNIE: Then I will conclude with my remarks,  
22 Your Honor, other than to ask the Court to consider  
23 that we be allowed to submit closing argument  
24 memorandums on the basis that from 5:30 until 10:00  
25 last Friday night, I received 25 e-mails from

1 plaintiffs' counsel and defense counsel simultaneously.  
2 I'm not saying they talked, but it was shocking that  
3 they started coming in at exactly the same time, that  
4 contained their memorandum and exhibits for this  
5 hearing today. It was literally impossible after the  
6 close of business Friday night to adequately respond to  
7 those. And much has gone on today that requires  
8 digestion and response, I would submit, both by the  
9 Court and counsel.

10 So we would ask for permission to respond to  
11 those on a fairly reasonable basis. And hopefully, the  
12 Court will grant that. And that's all I have, Your  
13 Honor. And I do appreciate your time and your  
14 consideration for Mr. Hege and all the South Carolina  
15 class members.

16 THE COURT: All right. And you are either free  
17 to go or stay or walk out when you are ready. You  
18 don't need me to call a break.

19 MR. KNIE: I'll stay a while. Thank you, Your  
20 Honor.

21 MR. MATTHEWS: Gail Matthews for the objector  
22 James and Loretta Carroll, Daniel Crager, and William  
23 and Kathleen McWhorter. I don't claim to be a class  
24 action expert.

25 THE COURT: You may be now, Mr. Matthews.

1 MR. MATTHEWS: Well, I'm probably not going to  
2 know any more today --

3 THE COURT: You've never lost a class action  
4 case, have you?

5 MR. MATTHEWS: I've never lost one. That's  
6 right. I've only had one. But that makes me think, I  
7 settled a case, got the money last -- two months ago,  
8 in which we represented the Arkansas policyholders of  
9 Farmers Insurance Group. Now, what the -- this case is  
10 all about to me is, there were some 11 other cases --  
11 after we filed that lawsuit in 2000, 11 other cases  
12 decided the issue as to whether or not the collision  
13 policy covered diminished value. Ten of those states  
14 ruled that it did not. Farmers new full well that the  
15 Arkansas Supreme Court had ruled to the contrary.

16 Now, what the plaintiffs and defendants are  
17 trying to do in this case, if somebody else had filed a  
18 class action -- I'm not saying it's collusion here.  
19 But if somebody else had filed a class action in any  
20 other state, then if they could have made a settlement,  
21 they could have knocked out my case. That's exactly --  
22 they got all these actions pending elsewhere, and  
23 they're going to knock all these cases out. They're  
24 just going to say we're going to apply -- and it's  
25 quite simple why they filed this in Arkansas. I mean,

1 they could have filed it up in Judge Wright's court,  
2 where they had already been denied class certification.  
3 I'm not casting any aspersions on you.

4 They filed it in Arkansas because Arkansas is  
5 very, very liberal in allowing class actions and in  
6 allowing class action settlements. I get calls all the  
7 time from lawyers in other states, now that I've had  
8 one case, that want me to, you know, participate with  
9 Arkansas in filing Arkansas action on it and all.

10 So, you know, Mr. Phillips said, the law is so  
11 different in Arkansas and other states. And, you know,  
12 you and I were on the same side of the fence for a long  
13 time representing insurance companies, and we've both  
14 been to the Supreme Court so many times on insurance  
15 policies that if there's a more liberal state than  
16 Arkansas in interpreting policies in favor of a  
17 policyholder, I don't know where it is. I mean, it's  
18 just very, very liberal.

19 So I don't think there's any doubt that Arkansas  
20 courts would rule that actual charges means the bill  
21 you receive. So -- but what we're going to do here  
22 now, we're going to take Arkansas' easy law as far as  
23 filing the action, and we're going to turn it around.  
24 They couldn't get class certification, yet we've got  
25 some of the same plaintiffs -- two of the same

1 plaintiffs, I believe, that couldn't get class  
2 certification, now they're down here, they agree to a  
3 class certification to knock out litigation everywhere  
4 else.

5       Maybe this is absurd. But it looks to me like  
6 under the theory they're going on here, State Farm  
7 could file a class action -- or have somebody file a  
8 class action and say, "Even though our policy does not  
9 exclude punitive damages, we're going to exclude  
10 punitive damages all over the United States. Every  
11 State Farm policyholder, we send you notice, if you  
12 don't opt out, we're going to knock out all your claims  
13 on it." I submit that that's just not right.

14       Now, the forty percent they're talking about,  
15 well, you know, that's the equivalent to two-thirds of  
16 what you're asking for. I suspect I've tried at least  
17 100 cases in which most of them, the defense was where  
18 the insurance company was a direct action. And in  
19 every case I've ever had, the attorney's fees,  
20 principal and interest exceeded 40 percent plus the  
21 damages. I'm sure the Court has had that same thing.

22       Almost every judge in Arkansas is going to award  
23 a third on a contingency contract. So 40 percent is  
24 not much when you consider what Arkansas law is on it.  
25 Plus it's -- this settlement appears to be knocking out

1 -- like Oklahoma is very liberal on punitive damages,  
2 bad faith. It's just knocking out every one of these  
3 people that have a claim from now on, is that knocking  
4 out any bad faith claims? This settlement just wipes  
5 out all kinds of lawsuits that people that -- I mean,  
6 it's not just knocking out the contract. It's knocking  
7 out every other case imaginable. It says this is the  
8 law in every state now. This is going to be the law,  
9 what actual damages mean or actual charges mean.

10 You know, they pointed out, the lawyers have,  
11 they've litigated this numerous times. But some of  
12 them they win, some of them they lose. But what it  
13 does to the individual person, as the other lawyers  
14 have said, it's really -- it's just grossly unfair, to  
15 let a man who has -- you know, if I had a client that  
16 had a half million dollar policy or half million  
17 dollars in cancer bills -- and that's not outrageous,  
18 half a million is not anymore. Personally, I know what  
19 the charges are for that because I've been through it  
20 myself. My wife has been through breast cancer.

21 So, you know, to say there's a \$15,000 cap under  
22 these policies is just not right. It's not fair. It's  
23 just strictly not fair. If what they say is true, then  
24 I am going to argue for the plaintiffs' attorneys now.  
25 If what they say is true, the value of this settlement

1 is \$151 million, then these lawyers should be getting a  
2 lot more than \$3.5 million, Judge. If the settlement  
3 value to the plaintiffs is worth \$151 million, then  
4 three and a half million dollars is not anywhere near  
5 what they should be paid.

6 As previously pointed out, I have -- I get class  
7 action notices all the time for everything imaginable.  
8 I've never seen one that didn't have a form in it to  
9 opt out. In this case, you've got to create your own  
10 policy form. The one we just had, I just told Judge  
11 Cole, said you will send out -- as a matter of fact, we  
12 sent it out the first time on notice on the fairness  
13 hearing, we sent it out again, that you could opt out  
14 if you wanted to.

15 I don't know how many have opted out in this  
16 case. Nobody has said that. I understand there's a  
17 very few objectors. So I don't know the answer to how  
18 many has opted out. But if you read this notice,  
19 there's no way in there -- if you've never had cancer  
20 and you don't have a bill, why in the world would you  
21 opt out? I mean, your rights are being just knocked  
22 out, but you're not told they're knocked out unless  
23 you're a lawyer. Even though I'm a lawyer, I don't  
24 even understand all the terms in there myself. I don't  
25 -- I'm not doing a very good job, I don't think, of



1 just stating. This is -- I mean, if it was a Arkansas  
2 policyholder, it would be one thing. But a nationwide  
3 settlement in which we say we're going to -- because of  
4 Arkansas' liberal use of class action lawsuits, we're  
5 going to let you decide all these other cases, to me,  
6 this is no different than the Tennessee judge trying to  
7 enjoin you from this hearing.

8 Now, what you are going to do here today if you  
9 grant this is, you're going to say, "Okay, Tennessee  
10 Judge, I am going to decide your case now." Is that  
11 not correct?

12 THE COURT: Well, I don't think so because  
13 anybody that's in their own litigation has decided to  
14 opt out of this. I am only deciding those people's  
15 cases who decline to opt out of this lawsuit. And if  
16 you -- your example in your --

17 MR. MATTHEWS: The class certified up there,  
18 Judge.

19 THE COURT: Your case, if you called all of your  
20 class members and suggested they opt out of your case,  
21 the insurance company can settle whatever class action  
22 they want and not affect your class action here in  
23 Arkansas if your class decided to opt out of their  
24 settlement.

25 MR. MATTHEWS: If the Tennessee court, as I

1 understand it, had granted class status, right? That's  
2 on appeal? That's on appeal?

3 MR. LEVENTHAL: That's not correct.

4 THE COURT: That's why I was looking at you kind  
5 of funny. I had understood to the contrary. And  
6 really, the only thing I've been keeping up with the  
7 Tennessee federal judge is if he's telling me what to  
8 do and what not to do. But -- that may be an  
9 overstatement, but --

10 MR. MATTHEWS: I think that's what it was.

11 THE COURT: You can always say what you want  
12 until the appellate court tells you otherwise. But I  
13 disagree that I'm resolving people's cases who decided  
14 to opt out of this class action. I don't think I'm --

15 MR. MATTHEWS: Oh, I don't think you're deciding  
16 the ones that's opted out. That's not what I'm saying.  
17 I'm saying that any other -- maybe I'm wrong. It's my  
18 understanding there had been class action certification  
19 in other courts. Is that wrong?

20 MS. McCABE: That's wrong.

21 MR. MATTHEWS: I apologize.

22 THE COURT: You're not a very good class action  
23 lawyer.

24 MR. MATTHEWS: No. I'll admit it. I'll admit  
25 that. Another thing that's unfair about this is, they

1 say that we've got 5,200 or so people who they know  
2 have claims under this policy. And 2,000 of them, I  
3 think, or some number, have filed claims.

4 Now, they already know that these people had  
5 these claims because they obviously submitted claims to  
6 them. So why are those people having to submit another  
7 claim? They already have that information. All  
8 they've got to do is look at their file or look at  
9 which hospital bill or which doctor bill it was and get  
10 it and send the people their money. They shouldn't  
11 have to file any claim. I mean, that's the biggest  
12 ruse there is in class actions and the reason the  
13 insurance companies always say you have to file a claim  
14 form, because they know most people won't.

15 That's just how you -- what -- I hadn't found out  
16 yet. But I know when I had the hearing in our case  
17 with 40,000 claims, less than 10,000 people had filed  
18 claims. I mean, these people don't file them. They  
19 just don't do it. They say, "I won't get any money."  
20 They see one every once in a while where they'll get  
21 one -- a check six cents or something like that. So  
22 there's no reason they should have to submit any claim  
23 forms.

24 I don't -- I just don't feel like it's right to  
25 allow Arkansas courts to determine what actual charges

1 are nationwide. I mean, I think each state should have  
2 that right to do it themselves. Thank you.

3 MS. McCABE: Just briefly, Your Honor. I was a  
4 little confused because I'm not sure -- I've never been  
5 to a hearing before where someone is making an argument  
6 that doesn't really represent someone who is affected.  
7 And I know that Mr. Matthews was just brought into this  
8 case a few days ago. But four of the people that he  
9 stood up here and said that he was going to be arguing  
10 on behalf of were not class members and withdrew their  
11 objections. And the fifth, Mr. Crager, is not a  
12 policyholder. His policy lapsed in 2005, before the  
13 actual charges claims correction was ever implemented,  
14 and he never had a claim for cancer.

15 So he is in the settlement as a former cancer  
16 policyholder who could have submitted a claim for a  
17 benefit for \$1,000 of insurance over the next 10 years.  
18 But he has no standing to object to the actual charges  
19 injunction or the premium rate freeze or the premium  
20 rate relief or any of those things because those parts  
21 of the settlement do not affect him.

22 Also, this class does not apply Arkansas law to  
23 all the policyholders. It applies a class action  
24 settlement agreement to all the policyholders, and to  
25 all the policyholders who did not opt out. And 476, I

1 believe, people did opt out. So it's pretty clear that  
2 people who wanted to opt out of the class could opt out  
3 of the class. Mr. Hege is a good example. He wrote  
4 the Court a lengthy letter. He possibly could have  
5 opted out, if that was what he was interested in. But  
6 he actually filed a claim and he's going to get a  
7 \$15,000 claim in the settlement.

8 And we haven't heard today how South Carolina  
9 counsel came to represent to Mr. Hege. But I suspect  
10 that the same thing happened that happened with  
11 Ms. Hunter, that this person's personal information was  
12 placed in the court file and they were contacted and  
13 solicited to join and submit a further objection or ask  
14 for leave appearance.

15 While we're sympathetic to Mr. Hege's position,  
16 he has filed a claim form. He will be entitled to the  
17 \$15,000 benefit. And we believe that the settlement is  
18 fair, and we respectfully submit that the objections  
19 should be overruled. Thank you.

20 MR. BOHRER: Your Honor, I'll be brief. With all  
21 due respect to Mr. Matthews, who I know just walked  
22 into this and probably didn't know what he was walking  
23 into, the defendant's memorandum at page 54 is -- very  
24 comprehensively outlines the creative past of Donald  
25 Crager and his original counsel, Mr. Bacharach, as

1 professional objectors who do nothing but interfere and  
2 interlope in settlements across the country. And I  
3 know, unbeknownst to Mr. Matthews, two of the objectors  
4 that he appeared for, four of the objectors that he  
5 appeared for today were never class members, filed an  
6 objection without any basis whatsoever, were all  
7 represented by this professional objecting attorney,  
8 Mr. Bacharach, and have withdrawn their objection.

9 And so I think it's in order to question the  
10 credibility and motivation of why Mr. Crager is before  
11 the Court as an objector, given his relatively sordid  
12 past history of being a professional objector.

13 Two other quick comments. I was not involved in  
14 the case that Mr. Matthews describes. But I suspect it  
15 was a national class that was settled here? No.

16 MR. MATTHEWS: Arkansas.

17 MR. BOHRER: One of the cases that Mr. Matthews  
18 references that Your Honor is quite familiar with in  
19 this litigation is the Gooch case. Gooch is a putative  
20 national class action in Tennessee. It's the same as  
21 this case. They are seeking national certification.  
22 And so it's just a bit inconsistent at best and  
23 disingenuous at most for anyone to say that a single  
24 forum should not be the manner in which this litigation  
25 is resolved on a nationwide basis. The Gooch

1 plaintiffs, who, as Your Honor knows, have objected  
2 whenever possible to this settlement, are alleging the  
3 same national class certification that Your Honor has  
4 granted. And so it's very difficult, I think, to be  
5 consistent and take a position adverse to Arkansas when  
6 Gooch is alleging the same national certification.  
7 Given Mr. Crager's past history, we would respectfully  
8 request that these objections be overruled.

9 MR. BAKER: Your Honor, I believe that concludes  
10 the objections. And the defendants originally attached  
11 to their motion for preliminary approval a proposed  
12 precedent for final approval. And we believe it  
13 prudent, after giving it more thought, to ask the Court  
14 to permit us to give you, for your consideration, a  
15 proposed precedent that would include findings of fact  
16 and conclusions of law by a date certain for Your  
17 Honor's consideration, as opposed to the one we  
18 originally attached. We think it -- otherwise, I think  
19 that concludes the proof for today's hearing.

20 MR. BOHRER: Your Honor, the plaintiffs do have  
21 the pending motion for fees, costs, and class  
22 representative pay, which we'll take up at Your Honor's  
23 pleasure.

24 THE COURT: Did you want to argue that at this  
25 time or let me rely on the pleadings? Your pleasure.

1 This will be your only opportunity to argue that motion  
2 if you choose to.

3 MR. BOHRER: Well --

4 THE COURT: We're not coming back just so you can  
5 argue that. Did you want to --

6 MR. DAN TURNER: Just whenever the Court is ready  
7 for me, Your Honor.

8 THE COURT: Well, why don't we go ahead and have  
9 him stand down just for a second, let you get your --  
10 because I hadn't this morning anticipated whether or  
11 not that would be later on in the hearing or later on.  
12 But I think it's probably best that you go ahead right  
13 now and make your argument.

14 MR. DAN TURNER: Thank you, Your Honor. Dan  
15 Turner on behalf of William Shepherd, Your Honor. I  
16 don't want to spend a lot of time reading the Court our  
17 pleadings. But as the Court is aware, we filed our  
18 motion for leave to intervene on June 23rd. I've  
19 listed this in our brief that we filed with the Court  
20 on June 25th, we requested an expedited ruling. The  
21 defendants moved for extension of time to respond to  
22 our motion on July the 9th. Over our objection, that  
23 was granted. And then they filed their response on  
24 July 16th.

25 Ultimately, Your Honor, the Court will recall, I



1 believe it was at Audry Hunter's hearing, the Court  
2 announced that all motions to intervene were denied. I  
3 contacted the Court's chambers and was told that there  
4 would be a written order prepared by the defendants,  
5 but we have not received one as of today, a written  
6 order reflecting that our motion to intervene was  
7 denied.

8 At any rate, it's Mr. Shepherd's position that  
9 during the pendency of his motion to intervene, he  
10 would not have been able to opt out; that clearly his  
11 intention was made known to this Court that he did not  
12 wish to participate in this settlement. And that's  
13 what we're asking the Court to do is to allow him to  
14 opt out. I can't imagine that the plaintiffs' counsel  
15 would object because I heard during the fairness  
16 argument the comment that some of these people should  
17 opt out. So I would be surprised if there's any  
18 objection.

19 I certainly expect the defense to object, and  
20 I'll be happy to reserve any rebuttal. I see that the  
21 Court probably has questions. I can see on your face.

22 THE COURT: Well, the only question I had was  
23 your comment regarding his inability to opt out with  
24 the pending intervention. Maybe I'm thinking back on  
25 the dates on when -- whether or not you had moved to

1 intervene and were waiting on a hearing, that it --  
2 essentially, the deadline for opting out came and went  
3 while you had a pending motion to intervene.

4 MR. DAN TURNER: That's true, Your Honor. And,  
5 of course, it would be -- Mr. Shepherd believed and  
6 still believes -- he accepts this Court's ruling, but  
7 he still believes that this settlement will adversely  
8 impact him. The only way to prosecute that -- those  
9 rights would be to intervene, which is what he sought  
10 to do.

11 After this Court denied his motion to intervene,  
12 he should be allowed to opt out. There's no prejudice  
13 to anyone at this point to allow him to opt out. His  
14 motion to intervene was effectively not ruled on until  
15 October 1st, and there still hasn't been a written  
16 order. I don't think that's necessarily required.

17 But the only reason I offer that, Your Honor, is  
18 to explain that we didn't file this motion on November  
19 the 6th just to give the Court something else to  
20 consider today.

21 THE COURT: No. I understood that. And the  
22 reason you were delayed wasn't necessarily because of  
23 the defendants or the plaintiffs, but because of other  
24 intervenors who wanted their say and said they couldn't  
25 be at the earlier hearing. And he's not hearing right

1 now. I'm talking about Oklahoma counsel. That, in my  
2 opinion, tried to put the hearing off as late and late  
3 and late as he could. We accommodated him and had that  
4 in November, I think. Well, maybe not --

5 MR. DAN TURNER: October 1st.

6 THE COURT: October 1st.

7 MR. DAN TURNER: I think the record will bear,  
8 Your Honor, no kidding. Two days after we filed our  
9 motion, we requested an expedited ruling.

10 THE COURT: No. I take -- I take that as a fact.  
11 I don't have any dispute about that. What I'm trying  
12 to figure out is whether or not your opportunity to opt  
13 out came and went while your motion to intervene was  
14 pending.

15 MR. DAN TURNER: It did, Your Honor. And we  
16 would argue that our motion -- we attached our motion  
17 to intervene a complaint in intervention. And there  
18 has been comments about this, that there wasn't an opt-  
19 out form. I think that should be sufficient notice  
20 that certainly Mr. Shepherd intended to assert his own  
21 rights.

22 And I guess what I'm arguing is that that  
23 complaint in intervention should operate as his notice  
24 to the Court it was his intention to opt out in light  
25 of the Court's ruling not to allow him to intervene, if

1 that makes sense.

2 THE COURT: It does.

3 MR. DAN TURNER: But I would like to respond to  
4 any arguments that they have, if I can yield the floor.

5 THE COURT: All right. Y'all want to respond to  
6 that? Mr. Leventhal?

7 MR. LEVENTHAL: So we have a motion to opt out  
8 late?

9 THE COURT: That's how I had understood it.

10 MR. LEVENTHAL: I guess I would say, Your Honor,  
11 first of all, here's a person who is represented by  
12 three law firms and he moves to intervene. Why did he  
13 move to intervene or why did he not opt out? Because  
14 he made a tactical decision to stay in the case and to  
15 try to block the settlement, and he moved to intervene.

16 If he would have opted out, he couldn't move to  
17 intervene because he would have had no interest in the  
18 settlement. So his lawyers made a tactical decision to  
19 say, "Hey, let's move to intervene. We're not going to  
20 opt out."

21 So then they litigate their motion to intervene.  
22 And here, now they turn around because the Court  
23 overruled that and they say, "Well, now will you let us  
24 opt out?" Well, the deadline for opting out has come  
25 and past. Why do they want to opt out? So now they

1 can generate another lawsuit somewhere?

2 Now, the argument they made on the timing might  
3 apply to filing a claim, like they say, you know, they  
4 wanted that motion heard on July 27th. Well, the  
5 deadline for opting out had already come and past. The  
6 only deadline that had not come and past was the  
7 deadline for filing a claim, which was in August. So  
8 we're prepared to allow Mr. Shepherd to file a claim  
9 with the settlement late.

10 Why he didn't file a claim to begin with, I have  
11 no idea. You know, I don't understand that. He should  
12 have filed a claim. He was trying to stay in the  
13 settlement. He was trying to move to intervene. He  
14 should have filed a claim. He's a past claimant, and  
15 he'll have a right to a payment under the settlement.

16 So we would say that Mr. Shepherd -- I think we  
17 would offer to allow him to file a claim in the  
18 settlement late. In terms of opting out late, that was  
19 a tactical decision that his three lawyers made. And  
20 consistent with all the other rulings that the Court  
21 has made, there is no basis for creating an exception  
22 for Mr. Shepherd.

23 MR. DAN TURNER: Plaintiffs?

24 MR. BOHRER: We have no comment, Judge.

25 MR. DAN TURNER: Since Mr. Leventhal brought up

1 the July 27th, Your Honor -- actually, on July the 9th,  
2 the defendants moved for an extension of time to  
3 respond to our motion to intervene and other motions.  
4 And you can look at the record. We weren't trying to  
5 delay this. We showed up in this Court on July 27th  
6 and Mr. Leventhal was not here. And I'm sure he would  
7 say, "Well, that's because we were in Tennessee or  
8 because of the motion in Tennessee."

9 But as you recall, Judge, we were prepared to  
10 move forward on other motion to intervene. It would be  
11 incredibly unfair to Mr. Shepherd now to hamstring him  
12 because of that. That was no fault of his own. But I  
13 go back to what I said earlier, I think clearly this is  
14 a --

15 THE COURT: What was the deadline to opt out?

16 MR. LEVENTHAL: June 28th, Your Honor.

17 MR. DAN TURNER: June 28th. We filed the motion  
18 to intervene on June 23rd, Your Honor. We requested  
19 expedited ruling on June 25th.

20 THE COURT: Okay. Anything further?

21 MR. DAN TURNER: No. Not from me, Your Honor.

22 THE COURT: Okay. From anyone? On the Shepherd  
23 issue? All right. I take it by your silence that  
24 there is not. Now you can get back up.

25 MR. BOHRER: Your Honor, I will be extremely

1 brief and take you up on your invitation to submit this  
2 on the brief. The only point I want to make is is that  
3 the fee is actually a very small percentage of the  
4 overall value. And it is actually a very small  
5 percentage, like 20 percent, of the value of the  
6 settlement without the injunctive relief.

7 And so if you look at this number and subtract  
8 out that number, it's like \$15 million. The fee is  
9 3.5. That's about 20 percent of the noninjunctive  
10 relief. If you look at the percentages of recovery  
11 method of calculating fees and the cases we cite,  
12 20 percent of the real dollar value, not the injunctive  
13 relief, is squarely in the middle of the range of  
14 reasonableness in similar cases. So for the reasons  
15 that we set forth in our brief, Your Honor, we move the  
16 Court to award attorney fees and costs combined of  
17 3.5 million.

18 And then last, Judge, each of the plaintiffs were  
19 to be awarded an incentive fee for acting as class  
20 representatives in the amount of \$7,500 each. We  
21 briefed that issue and set forth the reason and theory  
22 and the fact that that's a reasonable number, given  
23 their duty as class representatives. So we ask Your  
24 Honor to consider that request, as well. And I'm happy  
25 to answer any questions you may have.

1 THE COURT: I don't have any.

2 MR. MATTHEWS: I think my objection may have  
3 objected to attorney's fees. But if it did, I would  
4 withdraw that.

5 THE COURT: Does that number ring true there for  
6 you, Mr. Matthews?

7 MR. MATTHEWS: No. My objection is a little  
8 better than that.

9 THE COURT: They're asking for 3.5.

10 MR. MATTHEWS: Yeah. We got 9.75.

11 THE COURT: I was talking about you. I'm talking  
12 about the local cut on that. I actually listened to  
13 you when you came the other day, Mr. Matthews.

14 Mr. Baker, what I had understood is that you're  
15 essentially withdrawing any precedent order that you  
16 had previously presented to the Court because you  
17 wanted to --

18 MR. BAKER: No, Your Honor.

19 THE COURT: It was unclear to me.

20 MR. BAKER: We're not necessarily withdrawing it.  
21 We do believe it's accurate. We just believe it's  
22 probably more prudent to go ahead and prepare a  
23 proposed findings of fact and conclusions of law for  
24 Your Honor's consideration and entry.

25 MR. LEVENTHAL: If I could maybe clarify that,



1 Your Honor.

2 THE COURT: Sure.

3 MR. LEVENTHAL: The settlement agreement includes  
4 a proposed final judgment as one of the exhibits. The  
5 final judgment, we need to fill in some blanks, go  
6 through it one more time, make sure it's accurate, so  
7 we would submit it as a proposed final product for  
8 signature. And then there is a provision for proposed  
9 findings of fact and conclusions of law, which are  
10 typical in class action settlements. And those would  
11 be incorporated into the final judgment, and there's a  
12 reference in there -- in the form that's before the  
13 Court. So we would want an opportunity to present  
14 those for the Court's consideration.

15 THE COURT: As a general proposition, anytime I  
16 make a decision, I either make it -- take it under  
17 advisement and write the attorneys in the form of a  
18 letter order, which is nothing more than an  
19 announcement of what my decisions are and asking  
20 somebody to formalize it in an order. I am likely  
21 going to rule on the pending motions and the  
22 determination regarding the fairness hearing in that  
23 manner.

24 And then I will direct, likely, somebody to  
25 prepare orders that will reflect those rulings. And if

1 you feel that findings of fact and conclusions of law  
2 are prudent, I ask that you send those orders and those  
3 findings of fact both to me in hard copy and electronic  
4 situation, or e-mail them to me so we can make whatever  
5 changes in those orders we see fit without having to  
6 call people's secretaries or send back orders back and  
7 forth.

8 And I would ask that anybody that wants to  
9 participate in this, obviously everyone here, leave  
10 their e-mail address and we can get some kind of  
11 distribution list set up so those comments and changes  
12 can be sent around as efficiently as possible. I don't  
13 know if we just hand everybody -- if we've got one  
14 already, that's fine. I just wanted everyone an  
15 opportunity to yet again give us their e-mail address.

16 So I anticipate having changes in whatever orders  
17 are presented to me. So thank you for being as  
18 efficient as all of you were. I hope to have something  
19 out -- I was going to say late tomorrow or Wednesday,  
20 but it may be the end of the week. This needs to get  
21 resolved so y'all can be on your way to other issues.  
22 Anything further before we go off the record? All  
23 right. We're off the record. Thank you, everyone.

24 \* \* \* \* \*

25

C E R T I F I C A T E

STATE OF ARKANSAS )

) SS.

COUNTY OF PULASKI )

I, TAMMIE L. FOREMAN, CRR, RPR, CCR, official court reporter for the Third Division Circuit Court, Pulaski County, Arkansas, certify that I reported the proceedings by stenographic machine shorthand, reporting in the case of EDISON RUNYAN; DWIGHT PIPES; EARL L. PURIFOY; JOHN ROSS, As the Legal Representative of ELIZABETH ROSS; MARY WEIDMAN; DURAIN WEIDMAN; MARION HARRIS; and VAN R. NOLAN, Each Individually, and on Behalf of All Others Similarly Situated,

Plaintiffs

V. CV 2009-2066

TRANSAMERICA LIFE INSURANCE COMPANY; LIFE INVESTORS INSURANCE COMPANY OF AMERICA; MONUMENTAL LIFE INSURANCE COMPANY; and AEGON USA, INC.,

Defendants

before the Honorable Jay Moody, Pulaski County Circuit Judge, at Little Rock, Arkansas; that said proceedings have been reduced to a transcription by me by means of computer-aided transcription, and the foregoing pages constitute a true and transcript of the proceedings held to the best of my ability, along with all items of evidence admitted into evidence.

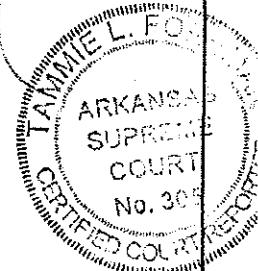
I further certify that I am not a relative or employee of any of the parties, or of counsel, nor am I financially or otherwise interested in the outcome of this action.

I serve as an impartial officer of the court and abide by all professional and ethical principles of the National Court Reporters Association.

WITNESS MY HAND AND SEAL on this 2nd day of December, 2009.

*Tammie L. Foreman*  
TAMMIE L. FOREMAN, CRR, RPR, CCR  
Certificate No. 305  
Notary Public in and for  
Pulaski County, Arkansas

My Commission Expires: 04-18-14



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